IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CIVIL APPLICATION NO.115 OF 2006
IN
LETTERS PATENT APPEAL NO.309 OF 2002
IN
WRIT PETITION NO.1493 OF 2002

Rajendra Babulal Malu & anr. Applicants
vs.
Sir Willium Wanless Chest Hospital & ors. Respondents

Mr.T.S.Ingale for the applicants.

Mr.S.M.Kamble for the respondent no.1.

Mr.P.M.Pastil, A.G.P. for the respondent no.2.

Mr.G.M.Savagave i/b.Mr.Satish Borulkar for the respondent no.3.

**CORAM : R. M. LODHA &**
**A.S.BAGGA, JJ.**

**DATED : 19th June, 2006**

**P.C.**

At the outset, the advocate for the applicants submitted that the respondents 5 to 12 be deleted from array of parties. At this request, the names of respondents 5 to 12 are allowed to be deleted.

2. We heard the advocate for the applicants and the respondents 1 to 3 through their respective advocates.

3. The applicants are the original appellants. By this application, they pray for refund of the amount of

Rs.2.50 crores and the interest accrued thereon and for return of the original Bank Guarantee and the extended Bank Guarantee furnished by them in the sum of Rs.2.50 crores.

4. On 17th October, 2002 this Court while admitting the appeal directed the applicants to deposit a sum of Rs.2.50 crores and also furnish Bank Guarantee in the sum of Rs.2.50 crores additionally within the time granted in the order. This Court further directed that the amount of Rs.2.50 crores so deposited shall be invested in a fixed deposit with the Nationalised Bank initially for a period of three months and continue to invest it on the same terms and conditions. In its order dated 17th October, 2002, this Court observed that at the time of disposal of the appeal, appropriate order will be passed.

5. By subsequent order dated 2nd August, 2005 the appeal was dismissed. However, no order was passed concerning deposit of Rs.2.50 crores and the Bank Guarantee furnished by the appellants.

6. The appellants challenged the order of this Court dated 2nd August, 2005 by filing the petition for special leave to appeal before the Supreme Court. The petition for special leave to appeal was withdrawn by

the appellants on 31st March, 2006.

7. It is, thus, clear that though the proceedings have terminated, no order regarding the amount of Rs.2.50 crores and the Bank Guarantee in the sum of Rs.2.50 crores furnished by the appellants pursuant to the order dated 17th October, 2002 has been passed.

8. The respective advocates for respondents 1 and 3 have no objection if the application is granted and the applicants are permitted withdrawal of the amount of Rs.2.50 crores along with interest accrued thereon and return of the Bank Guarantee and the extended Bank Guarantee furnished by them.

9. Having considered the matter, we are satisfied that the applicants may be permitted withdrawal of the amount deposited by them along with accrued interest and also the return of the Bank Guarantee/extended Bank Guarantee.

10. Hence the order:

(i) The applicants are permitted to withdraw an amount of Rs.2.50 crores and the interest accrued thereon.

(ii) The Bank Guarantee and the extended Bank Guarantee in the sum of Rs.2.50 crores furnished by the applicants pursuant to the order dated 17th October, 2002 are also ordered to be returned to them.

. Civil application stands disposed of accordingly.

**(R.M. LODHA,J.)**

**(A.S. BAGGA,J.)**